

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GWENDOLYN CHANDLER

Claimant

VS.

STATE OF KANSAS

Respondent

Self-Insured

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Docket No. 205,255

ORDER

Claimant appeals from an Award entered by Administrative Law Judge Brad E. Avery on January 26, 1999. The Appeals Board heard oral argument August 4, 1999.

APPEARANCES

Roger D. Fincher of Topeka, Kansas, appeared on behalf of claimant. Marcia L. Yates of Topeka, Kansas, appeared on behalf of respondent, a qualified self-insured.

RECORD AND STIPULATIONS

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

ISSUES

Claimant seeks benefits for an injury which she claims occurred as she was hanging up a bag containing reading material she intended to read while on break. Claimant had clocked in shortly before the alleged injury. The Administrative Law Judge denied the claim based on a finding that claimant's accidental injury did not arise out of claimant's employment. On appeal, claimant asks the Board to reverse this finding. If the Board finds the injury arose out of claimant's employment, respondent contends the claim should be denied for the additional reason that claimant failed to give notice within ten days as required by K.S.A. 44-520 and has not shown just cause for the failure.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

The claimant alleges injury to her shoulder while lifting a bag of personal reading material, and the ALJ found the injury did not arise from claimant's employment. The Board agrees. To arise out of the claimant's employment, the injury must have some causal connection to employment. This is not a strict requirement that the claimant be injured while actually doing the work. It is enough if the risk leading to the injury is incidental to the work duties. *Martin v. U.S.D.* No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); *Brobst v. Brighton Place North*, 24 Kan. App. 2d 766, 955 P.2d 1315 (1997); *Bailey v. Mosby Hotel Co.*, 160 Kan. 258, 160 P.2d 701 (1945). But not every act during the course of employment gives rise to a risk associated with or incidental to employment. *Squires v. Emporia State University*, 23 Kan. App. 2d 325, 929 P.2d 814 (1997). In this case, the act of placing personal reading material on a hook was for purely personal benefit and the risk associated was a purely personal risk. The Board therefore concludes, as did the ALJ, that claimant's injury did not arise out of claimant's employment.

In addition, the Board finds claimant did not give notice within ten days as required by K.S.A. 44-520 and has not established just cause for that failure. Claimant testified she gave notice to two employees. One acknowledged she knew claimant was experiencing pain but stated claimant did not advise her what caused it. The other denied claimant gave notice and established she was not on duty when claimant claimed to give notice. In addition, claimant asserted she did not fill out a report because one of the individuals in personnel was on vacation when the records show she was not.

In an earlier appeal from the preliminary hearing in this case, the Board found claimant had not satisfied the notice requirements of K.S.A. 44-520. The current record contains nothing which would change that conclusion. For the reasons stated more fully in that Order from the preliminary hearing, including those conflicts in the testimony mentioned above, the Board concludes claimant has not proven that she gave notice within ten days as required and has not established just cause for the failure.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Brad E. Avery on January 26, 1999, should be, and the same is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of August 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Marcia L. Yates, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director